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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SAMMY THOMAS,

12 Plaintiff,

13 v.

14 J. RODRIGUEZ, Correctional Officer,
15 and P. COLIO, Correctional Officer,

16 Defendants.

Case No.: 16-cv-2211-AJB-JMA

**ORDER DENYING PLAINTIFF'S IN
FORMA PAUPERIS STATUS**

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18 Plaintiff Sammy William Thomas, a state prisoner proceeding *pro se* and *in forma*
19 *pauperis*, filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 on August 29, 2016.
20 (Doc. No. 1) After a series of motions, Plaintiff filed his Third Amended Complaint
21 (“TAC”) on October 4, 2017. (Doc. No. 36.) On March 29, 2018, Magistrate Judge Jan M.
22 Adler issued Reports and Recommendations (“R&R”), recommending that the Court grant
23 Defendants’ motion to dismiss the TAC for failure to state a claim. (Doc. No. 41.) On June
24 29, 2018, Plaintiff filed his Objection to the Magistrate Judge’s R&R. (Doc. No. 45.) On
25 September 4, 2018, the Court adopted the Magistrate Judge’s R&R, overruled Plaintiff’s
26 objections, and dismissed the action without leave to amend based upon Plaintiff’s failure
27 to state a claim. (Doc. No. 46.) This occurred only after Plaintiff’s several unsuccessful
28 attempts to state facts to support a claim.

1 On September 17, 2018, Plaintiff filed a timely notice of appeal. (Doc. No. 48.)
2 Subsequently, the Ninth Circuit has referred the matter to this Court for the limited purpose
3 of determining whether Plaintiff's *in forma pauperis* status should continue or whether the
4 appeal is frivolous or taken in bad faith. (Doc. No. 51.)


5 Under 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma pauperis if
6 the trial court certifies in writing that it is not taken in good faith." An appeal is in "good
7 faith" where it seeks review of any issue that is "non-frivolous." *Hooker v. American*
8 *Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An action is frivolous where it has "no
9 arguable basis in fact or law." *O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990)
10 (quoting *Marino v. Vasquez*, 812 F.2d 499, 508 (9th Cir. 1987)).

11 Here, there is no arguable basis in fact or law for this appeal. Thus, the appeal is
12 frivolous. Consequently, the Court certifies that Plaintiff's appeal is not taken in good, and
13 therefore, Plaintiff's *in forma pauperis* status should not be continued for purposes of this
14 appeal. Accordingly, the Court hereby revokes Plaintiff's *in forma pauperis* status. Should
15 Plaintiff wish to pursue an appeal, he must pay the requisite filing fee.

16 In accordance with the Ninth Circuit's referral notice, the Clerk of the Court shall
17 forward a copy of this Order to the Ninth Circuit and the parties. (Doc. No. 51.)

18 **IT IS SO ORDERED.**

19 Dated: October 5, 2018

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21 Hon. Anthony J. Battaglia
22 United States District Judge
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